

Chapter 4

Privacy concerns

Some people have raised privacy concerns relating to the storage and use of name-identified forms from censuses.

In the past, concerns have focussed on the use of census collectors and confidentiality when results from the census are released.

It has been suggested that the manner in which records are stored could influence community concerns about privacy and confidentiality. People may hold deeper concerns about retention of their records as computer records than they would about the retention of paper forms or of microform copies of the forms.

The Committee examines the Information Privacy Principles in the Privacy Act 1988 in the context of the census and looks at how privacy concerns relating to the storage and use of name-identified census records could be overcome.

Introduction

4.1 This chapter examines privacy concerns relating to the storage and use of name-identified forms from future censuses, and discusses the Information Privacy Principles (IPPs) in the *Privacy Act 1988*.

4.2 The manner in which the information is stored could influence community concerns about privacy and confidentiality. The Committee believes that people may have stronger concerns about the storage of census information as computer records than they would about the retention of paper forms or of microform copies of the forms. Concerns appear to focus variously on the security of records stored as computer files and on the potential for the records to be copied or matched electronically to other databases.

4.3 The Committee received evidence that a number of concerns about privacy and the census already exist. It was suggested that any risks to individual privacy, if census forms were retained, stored safely and released for research purposes after a considerable period of time are considerably less than contemporary risks to individual privacy. This chapter commences with an examination of this issue.

Existing concerns about privacy and the census

4.4 ABS has advised that the release of census information is constrained by the confidentiality provisions of the *Census and Statistics Act 1905*. Information cannot be released in a manner that is likely to enable the identification of a particular person or organisation.¹ ABS considers that even though this legislative protection exists, privacy and confidentiality remain key issues that need to be addressed by ABS in the course of each census.²

4.5 Privacy concerns are addressed by the ABS in the development of the content of the census form and in field operations.³ Census procedures that have implications for privacy are developed in full consultation with the Privacy Commissioner. Furthermore, ABS assures the public during the conduct of the census that names and addresses are not transferred to computer files.

1 Australian Bureau of Statistics, *Submissions*, p. S354.

2 Australian Bureau of Statistics, *Submissions*, p. S368.

3 Australian Bureau of Statistics, *Submissions*, p. S372.

4.6 Despite these measures, the Committee was advised that there was still considerable concern about privacy and confidentiality issues during the last census. Mr Nigel Waters, of the Office of the Privacy Commissioner, told the Committee that his office received many calls about privacy issues.⁴ Members of the public also contacted the Privacy Committee of NSW.⁵ In addition, census collection staff reported that many householders raised privacy worries with them, and the ABS received some ten thousand telephone calls raising concerns about privacy, confidentiality or the need for names and addresses to be provided.⁶

4.7 Some evidence argued that any risks to individual privacy if census forms were retained, stored safely and released for research purposes after a very lengthy period, are considerably less than the contemporary risks to individual privacy. It was suggested that many people do not believe that personal information from the census is kept confidential.

4.8 Two particular concerns raised with the Committee were the use of census collectors to collect completed census forms from householders and the release of information from the census.

Use of census collectors

4.9 The use of census collectors to deliver and collect census forms personally may cause concern among some members of the community.

4 Mr Nigel Waters, *Transcript*, p. 198.

5 Privacy Committee of NSW, *Submissions*, p. S614.

6 Australian Bureau of Statistics, *Submissions*, p. S372.

4.10 ABS stated that in recent censuses there has been an increased demand by householders for privacy envelopes in which to seal the completed form so it would be passed unopened to the group leader. Other people mail back their forms rather than give them to the census collector. The number of forms returned through the mail has increased from 57,000 in 1986 to 140,000 in 1996 even though this is not an option freely offered.⁷

4.11 One concern that some people in the community may have about census collectors is that they, particularly older people, simply may not want to open the door to a stranger. It was also suggested that some people may be concerned about handing a completed census form to a census collector. Although procedures are adopted by ABS to avoid collectors in urban areas working in the districts in which they live, there is no assurance that collectors will not collect completed census forms from people they know. In non-urban areas it would be more likely that collectors would know some householders.

Release of information

4.12 The Committee notes that some members of the community are concerned that it may be possible for an individual or a household to be identified from the information that is currently released from the census. The Committee also notes that there has been some discussion in the media about this issue.⁸

7 Australian Bureau of Statistics, *Submissions*, p. S369.

8 For example, *The Newcastle Herald*, Jeff Corbett, 'Big Brother now has your name', 12 November 1997.

4.13 Concerns appear to centre on the release of census information in blocks as small as a collection district.⁹ Some people suggested that individuals or particular households within that collection district could be identified by cross-matching census data to other sources of information such as the telephone book.

4.14 The Committee has been advised that information from the census is not released by the ABS in a form which would allow a household or individual to be identified. ABS has stated that a number of adjustment techniques are used to ensure the confidentiality of data that are released, including making random adjustments to counts in statistical tables that are less than four.¹⁰

Privacy issues if census forms are retained

Information Privacy Principles (IPPs)

4.15 The Organisation for Economic Cooperation and Development (OECD), of which Australia is a member, has expressed an international consensus that privacy involves more than simply seeking to prevent disclosure of sensitive personal information:

Privacy dictates an approach to the collection, storage, use and disclosure of personal information which emphasises purpose specification, use limitation, openness and fair dealing in the

9 On average there are about 200 dwellings per collection district, however, there may be more in urban collection districts, and in rural areas a collection district may contain few dwellings yet cover an extensive area.

10 Australian Bureau of Statistics, *Submissions*, p. S354.

interest of giving individual citizens a measure of control over how their information is used.¹¹

4.16 The Privacy Commissioner has argued that it is through the IPPs in the Privacy Act that individuals are given some control over their personal information that is held by federal bodies. The IPPs cover the collection, security, access, amendment, use and disclosure of personal information.¹²

Collection of personal information

4.17 IPP1 provides that information should only be collected for a lawful purpose which is directly related to the function of that collector and where collection of that information is necessary for that purpose, or a directly related purpose.

4.18 The Privacy Commissioner has interpreted IPP1 such that ABS, when collecting information through the census, is clearly doing so for a purpose which is central to its statutory function. This would continue to be the case if the law were changed to allow forms to be retained, even though such a change would be to accommodate the purposes of third parties.¹³

4.19 Mr Rodney Cavalier, the then Chairman of the Advisory Council on Australian Archives, suggested that it should be an express purpose of the census that it is “not only serving the immediate economic needs

11 Privacy Committee of NSW, *Submissions*, p. S615.

12 Privacy Commissioner, *Submissions*, p. S668.

13 Privacy Commissioner, *Submissions*, p. S670.

and planning needs of the Australian nation but it is a way of informing the future about how we are living now".¹⁴

4.20 IPP2 imposes an obligation upon ABS to ensure that individuals are generally aware of the purpose for which their information is being collected. IPP2 also obliges ABS to inform individuals about other parties to whom it is the usual practice of ABS to disclose their personal information, and if ABS knows, of any other bodies to which those other parties usually pass the information.

4.21 The Privacy Commissioner interprets IPP2 as imposing on ABS an obligation to notify individuals if their information were being collected for purposes other than ABS's own immediate statistical functions.¹⁵

4.22 The Privacy Commissioner also stated that if census forms were retained, ABS would have to notify Australians that their personal information would be disclosed to other parties after a certain period and, in general terms, who those parties would be.¹⁶

4.23 Mr Allan Thompson, Director of Legislation, WA Ministry of Justice, told the Committee that:

either people should be told, firstly, up-front that it is going to be used for particular purposes; or as a fall-back position, in the event that we are not able to isolate the particular uses to which it might be put, it may be put to some uses – for example, medical or health research – alerting individuals as they fill in these forms to the fact that the information may be used for those purposes.¹⁷

14 Mr Rodney Cavalier, *Transcript*, p. 366.

15 Privacy Commissioner, *Submissions*, p. S670.

16 Privacy Commissioner, *Submissions*, p. S670.

17 Mr Allan Thompson, *Transcript*, p. 100.

4.24 ABS considers that householders could be informed on the census form or in the information booklet which is provided with the census form.¹⁸

4.25 IPP3 obliges ABS to take reasonable steps to ensure that, having regard to the purpose for which the information is collected, the information collected is relevant to that purpose and is up-to-date and complete.

4.26 The Privacy Commissioner believes that currently ABS is confident that most individuals supply reasonably accurate information for aggregate statistical purposes and so no further steps are necessary to check the information. However, if census forms were to be retained for future release, ABS would need to take more care to ensure the accuracy of the information supplied, for instance, by requiring each individual to sign-off their own details.¹⁹ Information collected on census forms could be inaccurate because the household forms are completed typically by one householder supplying information of up to five other individuals. Furthermore, information may be supplied about an individual member of a household without that individual providing or verifying it.²⁰

4.27 ABS has advised that ensuring that each person in a household certifies that his or her own details are correct would involve considerable administrative burden.

18 Australian Bureau of Statistics, *Submissions*, p. S374.

19 Privacy Commissioner, *Submissions*, p. S671.

20 Privacy Commissioner, *Submissions*, p. S671.

Storage and security of personal information

4.28 IPP4 requires ABS to take reasonable security measures to protect any personal information it holds against loss, unauthorised access, use, modification, and other misuse.

4.29 The Privacy Commissioner considers that this requirement includes security of physical records, such as the paper census forms, and any information held on databases by ABS or by any party contracted by ABS to store or maintain the records. The underlying principles are that personal information should only be accessible to the minimum number of people necessary to efficiently operate the storage, retrieval and access systems, and that a record of who has accessed the information should be created to provide an audit trail.²¹

4.30 The Privacy Commissioner advised that the type of security measures which would be considered adequate would vary according to the nature of the retention methods employed and the procedures for access by individuals and third parties.²²

4.31 The Privacy Commissioner considers that if the records were transferred to Australian Archives after statistical processing is completed by the ABS, the two agencies would share the responsibility for security.²³

21 Privacy Commissioner, *Submissions*, p. S672.

22 Privacy Commissioner, *Submissions*, p. S672.

23 Privacy Commissioner, *Submissions*, p. S672.

Access and amendment

4.32 IPPs 6 and 7 give individuals rights to access the information held about them and to seek to amend that information if it is inaccurate.

4.33 The Privacy Commissioner stated that under current arrangements, where ABS uses information purely for statistical purposes and name-identified forms are retained only for a minimum period, there is no justification for individuals to have rights of access to and to amend their information. Statistical use of unidentified information cannot affect the interests of specific individuals. This is reflected in the exemption from the *Freedom of Information Act 1982* of documents containing information collected under the Census and Statistics Act.²⁴

4.34 The Privacy Commissioner considers that should name-identified census forms be retained for disclosure at a later point in time for research purposes, and potentially for wider purposes, then a case could be made for the FOI exemption to be removed, restoring individuals rights to access the information held about them and to seek to amend that information if it is incorrect.²⁵

4.35 The Privacy Commissioner stated that even if it was intended only to release the records after a significant period of time, the interests of individuals which may be affected would include the reputation of a person or regard in which a person might be held by his or her descendants once the information were released:

24 Privacy Commissioner, *Submissions*, p. S672.

25 Privacy Commissioner, *Submissions*, pp. S672–S673.

In this situation, inaccurate information may potentially affect the lives of persons other than the individual whose information is disclosed and at a time when the individual is not able to set the record straight with his or her descendants.²⁶

4.36 The Privacy Commissioner considers that individuals ought to be able to check the information which may have been given about them by someone else (for example, by another member of their household or their parents).²⁷ Information may be supplied about an individual member of a household without that individual providing or verifying it.

4.37 ABS interprets the current provisions of the Census and Statistics Act to mean that the only persons authorised to access the census forms would be the householders or persons who actually filled in the form. That could be one person or many in a particular household. Because census forms cover all the people at a particular address on census night, they may include unrelated persons such as visitors to the household.²⁸

4.38 The Privacy Commissioner considers that access rights would only be necessary when the information was released to researchers but this could mean that some of the individuals were no longer alive to exercise that right. Granting an access right at the time of release could be too late to serve the purpose of protecting an individual's interests.²⁹

26 Privacy Commissioner, *Submissions*, p. S673.

27 Privacy Commissioner, *Submissions*, p. S673.

28 Australian Bureau of Statistics, *Submissions*, p. S374.

29 Privacy Commissioner, *Submissions*, p. S673.

4.39 The Privacy Commissioner believes that giving effect to these rights by having an infrastructure to administer access and amendment processes would be costly.³⁰ ABS agreed with this view.³¹

Use and disclosure

4.40 ‘Disclosure’ and ‘use’ are two distinct methods of handling personal information which are regulated by IPPs 10 and 11.

4.41 The Privacy Commissioner interprets the ‘use’ of information as referring to when the information remains under the control of the record-keeper. ‘Disclosure’ is when the information is provided to a third party by the record-keeper. The use of information by a third party who has obtained that information from ABS is regulated by the Privacy Act as a disclosure of that information by ABS.³²

4.42 Two fundamental elements of information privacy protection required by the Privacy Act are that when individuals relinquish control over their personal information, by providing it to another party, their information:

- shall not be used for any purpose other than the purpose for which the information was collected or for a purpose which is directly related to the original purpose; and

30 Privacy Commissioner, *Submissions*, p. S673.

31 Australian Bureau of Statistics, *Submissions*, p. S374.

32 Privacy Commissioner, *Submissions*, p. S674.

- shall not be disclosed.³³

4.43 The Privacy Commissioner stated that the proposal to retain census information in a name-identified form is based on prospective future uses of the information by parties other than the ABS. These other parties will seek to use the information for purposes which are significantly different to the purposes for which the information is compulsorily collected. The Privacy Commissioner is doubtful that various kinds of research using name-identified census records, particularly by non-government bodies, could be regarded as a use directly related to the statutory purposes for which ABS collects information.³⁴

4.44 The Privacy Commissioner listed three circumstances which give rise to statutory exceptions to the basic restrictions upon the use and disclosure of personal information.

A. The individual is reasonably likely to be aware or made aware under notice that information of the kind is usually passed on to that party

4.45 Under this exception to the non-disclosure principle only, consent of the individual is not a requirement, provided the individual has been made aware of any usual disclosure practices of the record-keeper. Where collection of the information is not compulsory, the individual is in a position to be able to decide whether or not he or she will provide the information. In the case of the census, individuals do not have this option as they are required by law to provide their personal

33 Privacy Commissioner, *Submissions*, p. S674.

34 Privacy Commissioner, *Submissions*, p. S674.

information. The Privacy Commissioner believes that it would be contrary to the spirit of IPP11 to rely on this exception in these circumstances.³⁵

B. The individual has given consent

4.46 The Privacy Commissioner believes that, from a privacy perspective, there would be no difficulty with individuals being able to elect for their information to be retained for future research uses.³⁶

4.47 The Privacy Committee of NSW considers there is a problem with the provision of consent for minors:

Consider the situation where the consent is signed by a parent on behalf of children who may not be considered to have the capacity to give individual consent. Thirty years later the parent is dead and the form is disclosed despite the fact that the children, now adults, may have objected if they had been asked. In this situation the end result is a worse infringement of privacy than that which the original solicitation of consent is intended to prevent.³⁷

4.48 ABS stated that different consent may be needed for each different future research purpose. ABS also stated that there would be considerable practical difficulty in obtaining informed consent from each individual captured on household forms – generally the questions on the

35 Privacy Commissioner, *Submissions*, p. S675.

36 Privacy Commissioner, *Submissions*, p. S675.

37 Privacy Committee of NSW, *Submissions*, p. S617.

census form are answered by a responsible adult on behalf of all other household members.³⁸

C. Legal requirement or authority exists

4.49 The Privacy Commissioner stated that specific legislative authority for third parties to access the personal information would satisfy this exception.³⁹

Is destruction the only way to guarantee privacy?

4.50 The Privacy Commissioner advised that that office had always supported the destruction of census forms to ensure the absolute privacy of individuals whose information is contained on those forms.⁴⁰

4.51 ABS collects an extensive amount of very sensitive personal information during censuses. The Privacy Commissioner believes that the only way to guarantee that the privacy of persons will be protected is if the information is destroyed as soon as possible:

Any other treatment of census forms will create some degree of risk to the privacy of individuals in the form of potential mishandling or misuse of that information, irrespective of the measures taken to protect that information.⁴¹

4.52 ABS believes that a significant attraction of the practice of census form destruction was the opportunity this provided for a clear and

38 Australian Bureau of Statistics, *Submissions*, p. S818.

39 Privacy Commissioner, *Submissions*, p. S676.

40 Privacy Commissioner, *Submissions*, p. S669.

41 Privacy Commissioner, *Submissions*, p. S669.

simple message about confidentiality and privacy to be given to the public. ABS has made a strong practice of assuring the community of the confidentiality of its personal information through the destruction of census forms. ABS stated that if concerns are raised about privacy during the course of a census:

it is a great benefit to be able to present simple and clear messages through the media. The current policy of destroying census forms provides a clear, unequivocal message that the census is for statistical purposes only and census information will not be used for administrative or other purposes now or into the future. This allows ABS to counter any negative campaign about privacy with a simple statement that all identified personal information is destroyed.⁴²

4.53 Mr Nigel Waters, from the Office of the Privacy Commissioner, told the Committee that:

The fact that we get so many calls and the [ABS] itself gets so many calls about privacy issues during the conduct of the census indicates the level of sensitivity. It is clear that a fairly substantial number of people in the population do not already trust the assurances they are given about confidentiality of census information. If we were not able to give them the absolute assurance that we are currently able to, I suspect there would be a very much greater level of concern.⁴³

4.54 A contrasting view is presented by the Australian Archives whose stated policy is that:

42 Australian Bureau of Statistics, *Submissions*, p. S372.

43 Mr Nigel Waters, *Transcript*, p. 198.

... privacy alone is not sufficient reason to destroy records. Privacy can be protected, and confidentiality preserved, by secure storage facilities and restricting access. The Archives has appropriate security storage and an exemplary record in this area.⁴⁴

4.55 Other evidence supported the view that the destruction of records is not the only way to guarantee privacy, and that appropriate security arrangements could be put in place to protect sensitive records.

4.56 Dr Gordon Carmichael, Demography Program, Australian National University, reasoned that '[g]iven that destruction is the current practice and is heavily promoted as a confidentiality measure, the scope for discontinuation of that practice to be perceived as lessening the official commitment to confidentiality is obvious.'⁴⁵ He suggested that the problem would lie more in making the transition than in any ongoing suspicion about the retention of forms.⁴⁶

44 Australian Archives, *Submissions*, p. S401.

45 Dr Gordon Carmichael, *Submissions*, pp. S656–S657.

46 Dr Gordon Carmichael, *Submissions*, p. S657.